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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

VAN VO,

Plaintiff and Appellant,

v.

SCOTT DANG et al.,

Defendants and Respondents.

E063825

(Super.Ct.No. CIVDS1312766)

OPINION

APPEAL from the Superior Court of San Bernardino County. Donna G. Garza,  
Judge. Affirmed.

Law Offices of Robert B. Silverman, PC and Robert B. Silverman for Plaintiff and  
Appellant.

The Chang Firm and Randy Chang for Defendants and Respondents.

## I

### INTRODUCTION

Plaintiff and appellant, Van Vo, leased commercial real property from respondents and defendants, Scott Dang and Monique Dang. Vo sued defendants for forcible entry and detainer and intentional infliction of emotional distress. After a bench trial, the court found Vo did not have an enforceable option to renew his lease because of vagueness. Vo appeals from the judgment in favor of defendants. We hold the trial court's factual findings concerning the vagueness of the lease option are supported by substantial evidence. Otherwise, based on our independent review, we affirm the judgment.

## II

### BACKGROUND<sup>1</sup>

#### A. *Complaint*

On October 21, 2013, Vo filed a complaint against defendants, alleging two causes of action for forcible entry and detainer and intentional infliction of emotional distress. The complaint was based on a commercial lease agreement for a five-year term from July 1, 2008 to June 30, 2013. The lease agreement was for “the space and equipment and fixtures belonging to the kitchen and dining area within the food-to-go section” of the SM Asian Market, owned by defendants. The lease included an option to renew for an

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<sup>1</sup> Because Vo has not provided this court with a full and fair summary of the significant facts, we have based our summary of the background based on our independent review of the record. (Cal. Rules of Court, rule 8.204(a)(2)(C); *State of Calif. ex rel. Standard Elevator Co., Inc. v. West Bay Builders, Inc.* (2011) 197 Cal.App.4th 963, 968, fn. 1.)

additional five years upon written notice given no more than 90 days before the lease expired. However, the renewal option did not provide for a rental amount or for a method of calculating rent. The complaint further alleged that defendants declared the lease expired and ejected Vo forcibly on July 1, 2013. Vo also claimed damages for intentional infliction of emotional distress. The Dang defendants, who are brother and sister, filed an answer and affirmative defenses.

*B. Motion in Limine*

Before trial, defendants filed a motion in limine to exclude expert economic testimony from John M. Misuraca because of Vo's failure to participate in a timely exchange of expert witnesses before the discovery cutoff. (Code Civ. Proc., §§ 2016.060 and 2024.020.) Vo filed opposition. The trial court granted the motion.

*C. The Trial*

At trial, Vo testified that, during the original negotiation of the lease, he requested a five-year renewal option. He claimed that, in April 2013, he attempted to give Monique Dang written notice of his renewal of the lease. The letter stated: "I want to extend the lease of the Property . . . five (5) years. [¶] I want to exercise of five (5) years option to continue to lease. Please let me know what I have to do." Monique refused to accept or read the letter until Vo received and signed a Notice of Termination by Landlord, providing 90 days' notice that the lease would not be renewed. Vo then hired an attorney to prepare a letter, attempting to exercise the renewal option. However, the certified letter was refused.

Vo operated his business until June 30, 2013. When he arrived at the premises on July 1, 2013, defendants had restricted access to the leased space using yellow tape. With police assistance, Vo was able to retrieve a credit card machine. Vo testified his profits from the business were about \$2,000 or \$3,000 a month and his damages for lost income for five years were \$120,000.

Defendant Scott Dang testified that the lease renewal option was subject to agreement by the parties. The last time, Scott saw Vo was in November 2012 when Vo asked for a rent reduction. Scott refused to reduce the rent and Vo indicated he would not renew the lease. In March 2013, Scott sold the property to Monique's family trust.

Pete Kiat, Monique's husband, testified that, when he and Monique delivered the termination notice to Vo on April 4, 2013, Vo did not try to give them any written notice. On June 30, 2013, Kiat and Monique met with Vo at the premises to discuss inventory but Vo got angry and left. As he was leaving, Vo told an employee the business would not open the next day. On July 1, 2013, Kiat and Monique put up tape to keep customers out of the dining area. While they were cleaning up, Vo arrived and then left, returning with a police officer to retrieve Vo's credit card machine.

Monique testified that she managed the property for her brother, Scott. The lease renewal option was subject to the parties agreeing on the rent. Scott sold the property to Monique's family trust in March 2013. In March 2013, Vo told her he did not want to renew the lease for three reasons: 1) he had found a better location; 2) he owed money to the government; and 3) the rent was too high. Monique gave Vo a written notice of termination on April 4, 2013. Vo did not attempt to give Monique anything.

On June 29, 2013 at 6:40 p.m., Monique gave Vo a written notice to remove personal property. On June 30, 2013, she came to the property to perform an inventory. A lot of equipment was missing or broken and the property was dirty. Vo ignored her, took his money from the cash register, and left. On July 1, 2013, Monique and her husband taped off the restaurant area and began cleaning up. After Vo came and left, he returned with a police officer, and removed his credit card machine.

*D. The Trial Court's Decision*

After two days of trial and closing argument, the trial court presented its oral findings and decision. In particular, the trial court found the lease option was too vague to be enforced: “. . . this option contract . . . does not list the terms. It does not list the rent . . . [or] the guidelines for determining what the rent should be. It is uncertain in this option in this matter. [¶] . . . I do find in this case that the option in this matter did not create a property right for the plaintiff to extend the lease in this matter. That being because it was not specific enough in its terms to allow their mutuality of agreement in this matter.”

“. . . leases that contain options to renew with careless language are hard to enforce. And this is . . . one of those leases . . . that is so vague as to what the option is in specific terms that it's difficult for the plaintiff to enforce.”

“. . . the Court has some issue with the credibility because what I am hearing on both sides in this matter. Because what I am hearing is two different stories of the same situation . . . . However, I did hear from Plaintiff in this case indicating that Ms. Dang had offered her termination of the lease to him prior to, and then she would not accept his

paperwork indicating he wished to renew . . . this contract was so void of the four corners in that Plaintiff wasn't aware of . . . where to send an option to renew. Ms. Dang was . . . able to dissolve the agreement . . . .”

“I do find the option did not create a lease property right by the plaintiff . . . which would prevent the forcible entry and detainer.” “I find the lease option was so uncertain that it was going to be hard to enforce, because the terms were not agreed upon. . . . [¶] the Court will give judgment to the defense in this matter. I find that Plaintiff has not met [his] burden.” The court also found no evidence of force, intentional infliction of emotional distress, or damages.

### III

#### DISCUSSION

We review the judgment based on a mixed standard of review. The interpretation of the lease option is subject to a de novo review but the trial court's underlying findings and judgment are subject to a substantial evidence review: “Accordingly, ‘[t]o the extent there are material facts in dispute, we accept the trial court's resolution of disputed facts when supported by substantial evidence; we presume the court found every fact and drew every permissible inference necessary to support its judgment. (*Engineers & Architects [Assn. v. Community Development Dept.* (1994)] 30 Cal.App.4th [644,] 653.)’ (*Brown v. Wells Fargo Bank, N.A.* (2008) 168 Cal.App.4th 938, 953.)” (*Carlson v. Home Team Pest Defense, Inc.* (2015) 239 Cal.App.4th 619, 630.)

Contrary to Vo's argument, the language of the lease option was vague and was not unambiguous. The terms of a lease renewal were not defined as to the amount of the

rent. The only mention of rent was that it would be determined at the time of renewal. However, as the Supreme Court states in *Ablett v. Clauson* (1954) 43 Cal.2d 280, 285, “an option agreement which leaves an essential term to future agreement is not enforceable.” (*Etco Corp. v. Hauer* (1984) 161 Cal.App.3d 1154, 1158.) Vo could not exercise an option to renew the lease because, as the trial court found, the manner or terms for renewal were vague and were not stated in the lease option. (*Bekins Moving & Storage Co. v. Prudential Ins. Co.* (1985) 176 Cal.App.3d 245, 251.)

Because the trial court found the lease option was vague and Vo could not legitimately exercise an option to renew, there was also no basis for his claim for forcible entry and detainer. The trial court found Vo was not in legal possession of the leased property on July 1, 2013. (Civ. Code, §§ 1159, 1160, and 1172; *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1037-1038.) The trial court also found there was no evidence of force by defendants.

We reject Vo’s final argument that the trial court erred by not allowing him to amend his complaint to allege breach of contract. At trial, Vo’s counsel made a passing comment that the complaint was essentially for breach of a lease. But no motion to amend was made in the trial court and we decline to consider that now for the first time on appeal.

#### IV

#### DISPOSITION

The trial court found the lease option was too vague to enforce. Based on the trial court’s factual findings, which are supported by substantial evidence, and our

independent review, we affirm the judgment in favor of defendants. Defendants, as the prevailing parties, shall recover their costs on appeal.

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CODRINGTON  
J.

We concur:

RAMIREZ  
P. J.

SLOUGH  
J.